IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Bail Appl..No. 5493 of 2007()

CRIME NO.467/07 OF TRICHUR EAST POLICE STATION

: PETITIONER/ACCUSED NO.4:

M.V. MAHAMOOD, AGED 49 YEARS,
S/O. P.V. IBRAHIM, PROPRIETOR, INDIAN STAR EXPORTS
ANJALY COMPLEX, S.A. ROAD, COCHIN-16.

BY ADV. SRI.P.N.RAVINDRAN
SRI.V.JOHN SEBASTIAN RALPH
SMT.PREETHY KARUNAKARAN

RESPONDENTS: COMPLAINANT:

S.I. OF POLICE,
EAST POLICE STATION, TRICHUR (CR.NO.476/2007),
REPRESENTED BY THE PUBLIC PROSECUTOR,
SESSIONS COURT OF ERNAKULAM.

BY DIRECTOR GENERAL OF PROSECUTION SRI.P.G.THAMPI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5493 of 2007

Dated this the 20th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 4th accused. He faces allegations, inter alia, under Section 468 I.P.C. When it was registered, there were only 3 accused on the array. Accused 1 and 2 claimed to be the Managing Directors/Directors of a company who had approached the Kerala State Co-operative Bank for a huge loan of Rs.294 lakhs. The 3rd accused is the person who allegedly offered his properties as security for the said transaction. The loan was granted. It has become a bad debt. It has become a non performed asset of the Bank. At the moment, Rs.394 lakhs is due in that transaction to the petitioner.

2. When the bank took steps for recovery under the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002, it was revealed that the 3rd accused is not traceable and the property offered as security is non existent. The manager of the Bank filed the complaint before the police raising the grave allegation that the person who offered security is not traceable and the property is non existent. The crime was registered. Investigation commenced. In the course of investigation, the

Investigator - a Deputy Superintendent of Police is conducting investigation as per the orders of the superiors, came to the conclusion that the 3rd accused is a non existent person. He has further come to the conclusion that there is no property as described in the document, which was offered as security. He has further concluded that the document of title which was offered as security is also a forged one. It is forged in the sense that no such document at all has been registered at the S.R.O concerned. A very ingenuous method of forgery - of bringing into existence a document which is not registered at the Registrar's office to make it appear that such a document has been registered was employed. It was also revealed that all ancillary and corresponding documents like revenue receipts, possession certificates, subsequent correction documents etc. are all forged documents.

3. In the course of investigation, the investigator came to the conclusion that the petitioner, the 4th accused was the one who offered the 3rd accused as a surety and the documents of property as security for the transaction to the 1st accused. Investigation is in progress. The petitioner apprehends imminent arrest.

4. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The bank officials had vetted the

documents. They were satisfied about the title of the 3rd accused and the value of the property as assessed by the duly appointed valuers. It is too late in the day for the Bank to turn around a complain that the entire transaction was fraudulent.

5. In the nature of the contentions raised it was felt that the case diary must be perused. I have perused the case diary. I am happy to note that a fairly good and thorough investigation is being conducted by the Investigating Officer. At least there is a good beginning. Relevant documents have been seized. Crucially vital witnesses have been questioned. It is the case of the prosecution, on the basis of the materials collected so far, that the petitioner herein- the 4th accused, had agreed with the 1st accused and had made available to the 1st accused the services of the 3rd accused along with the relevant documents which now turns out to be forged documents. All such documents, as stated earlier, are alleged to be forged documents. The petitioner is the one who made those documents available as per a document in writing seized already by the Investigating Officer. Some person was put up as the 3rd accused. No such person really exists, it is alleged. The documents are executed by the first accused or the attorney of the 3rd accused on the strength of a Power of Attorney which is itself allegedly a forged one.

6. I must alertly remind myself that I am called upon to invoke and exercise the extraordinary equitable discretion available to this Court under Section 438 Cr.P.C. Such discretion is to be invoked sparingly and in exceptional cases that too only in aid of justice. Such investigation cannot certainly be invoked as a matter of course. The conscience of the Court must be satisfied that in the interests of justice such powers ought to be invoked. Where the powers of arrest, which the officials of the State have to arrest and detain a citizen, are about to be misused or abused, this Court will be justified in invoking such jurisdiction. Even when there is no abuse or misuse of the powers, when invocation of powers of arrest is likely to result in unjustified hardship or difficulties of an exceptional nature, then also such powers can be invoked. But the Courts must note that it is an extraordinary equitable discretion vested in the superior Courts alone. No specific guidelines are offered in the Code as to under what circumstances the powers can be and cannot be invoked. It is the sense of justice of the superior justice functionaries which must help them to identify the fit cases in which such discretion can and ought to be invoked. Parliament/legislature declares certain offences to be non bailable. A direction under Section 438 Cr.P.C will virtually convert a non bailable offence specified by the legislature to be a bailable offence in its

practical application subject to conditions imposed by the court. Extraordinary circumstances must certainly be available to justify invocation of such powers. I mean only to say that such circumstances do not at all exist in this case.

7. At this early stage of investigation, I shall not embark on a detailed discussion about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am in agreement with the learned Public Prosecutor that there are no features in this case which can justify the invocation of such powers. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

8. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-